

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re: Bard IVC Filters Products Liability Litigation)))))	No. MD-15-2641-PHX-DGC Phoenix, Arizona January 27, 2021 4:34 p.m.
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BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TELEPHONIC STATUS CONFERENCE

Official Court Reporter:
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Proceedings Reported by Stenographic Court Reporter
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T E L E P H O N I C
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1 (Proceedings begin at 4:34 p.m.)

2 THE CLERK: MDL case 15-2641, In Re: Bard IVC Filters
3 Liability Litigation, on for a telephonic status conference.

4 Counsel, please announce for the record.

5 MR. GOSS: Tim Goss for the plaintiffs.

16:34:59

6 MR. LOPEZ: Good afternoon, Your Honor, Ramon Lopez
7 also for the plaintiffs.

8 MR. O'CONNOR: Your Honor, Mark O'Connor for the
9 plaintiffs.

10 MR. NORTH: Richard North for the defendants.

16:35:11

11 MR. GAUDREAU: Russell Gaudreau for the defendants.

12 THE COURT: Anybody else?

13 Okay. Counsel, I have reviewed the status report that
14 was filed on January 26th by plaintiffs' counsel at Matthews &
15 Associates and Freese & Goss, and -- as well as previous
16 documents that we've entered.

16:35:47

17 This is where I see things standing as of today: We
18 are going to be entering an order in the next day or two that
19 will reinstate a number of cases that were previously dismissed
20 subject to the tolling agreement. The number that we've been
21 working with is 143 such cases, but the status report indicates
22 on page 2 that there's another four that have turned down the
23 settlement.

16:36:11

24 So what we need to do is get from plaintiffs' counsel
25 the identity of those four cases. We will add them to the

16:36:35

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1 other 143, and we will enter the order that brings those cases
2 back into the MDL. And as I say, we'd like to get that done in
3 the next day or two. So if you haven't given us the
4 identification information for those four cases, we'd
5 appreciate you doing it today or first thing tomorrow.

16:36:57

6 MR. NORTH: Your Honor.

7 THE COURT: Go ahead, Mr. North.

8 MR. NORTH: I'm sorry, Your Honor, Richard North.

9 I did send to Miss Outley yesterday via email and
10 copied the plaintiffs' attorneys the information for those four
11 cases so they can be included in the reinstatement order.

16:37:14

12 THE COURT: Okay. Nancy, any issues with that
13 information?

14 MS. OUTLEY: Let me look for it. I don't recall
15 receiving it, so let me look.

16:37:27

16 THE COURT: Why don't you look for it as we keep going
17 and let us know by the end of the call if for some reason that
18 hasn't come in.

19 The next step we will then take is to enter a remand
20 and transfer order. That remand and transfer order will
21 include these cases that we're reinstating in the MDL. By our
22 count there's going to be three cases that will be remanded,
23 that will be Schedule A to remanded transfer order. It's about
24 500 cases that will be transferred under 1404. That will be
25 Schedule B.

16:37:41

16:38:08

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1 That remanded transfer order will be essentially the
2 same order that we've entered before, just updated a little
3 bit. And we'll send those cases back to their home districts.

4 We will then have in place the March 15th deadline
5 that we established in CML 48 for the remaining Track 2 cases. 16:38:27
6 And so we'll be working toward that March 15th deadline.

7 I don't know if we have a hearing set related to that
8 yet. But let's -- Christine, maybe you could look to see if we
9 have one in or around March 15th, and we can come back and talk
10 about that. 16:38:53

11 A question that was raised in the status report that
12 you filed concerns the 200 or so cases that are still dismissed
13 subject to a tolling order. And in the January 26 status
14 report it indicates that there are about 20 of them considering
15 the settlement, about 21 who are deceased with no known heirs, 16:39:14
16 about 114 that are not responding to inquiries, and about 45
17 that can't be located, for a total of about 200 cases.

18 We will extend the deadline for dealing with those to
19 March 15th. I think that makes sense. But I want to tell you
20 what I think we should do then and get your thoughts. 16:39:41

21 I don't think it makes any sense if we still have, as
22 I'm sure we will, cases on March 15th where they're deceased
23 with no known heirs, or they're not responding, or they can't
24 be located, to send those cases back to other courts and just
25 have them have to deal with that problem. It seems to me, 16:40:03

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1 given the amount of effort that appears to have been put in to
2 locating these people, to getting them to respond, that their
3 cases should just be dismissed because they can't be
4 prosecuted.

5 And it sounds as though plaintiffs' counsel have been 16:40:20
6 making diligent efforts to try to get them engaged or locate
7 them and get them to deal with their case, and they're not.
8 And it seems to me they should just be dismissed for lack of
9 prosecution.

10 And my thought is that we ought to change the 16:40:35
11 dismissal without prejudice to a dismissal with prejudice,
12 because they're just not responding and they've had a lot of
13 time to do that.

14 And I would include in that anybody who won't make a
15 decision on the settlement by then. The 20 or so who haven't 16:40:51
16 decided ought to be told, you've got until then to decide, and
17 if you don't decide, we're going to dismiss your case. If you
18 opt out, fine, we'll remand it to another court. If you opt
19 in, fine, you'll get the settlement. But if you sit on the
20 fence, you're going to get your case dismissed, so that they 16:41:10
21 know they actually need to make a decision by March 15th.

22 That's my initial thought, but I'm interested in what
23 you all think we ought to do when we get there. Why don't we
24 start with plaintiffs' counsel.

25 MR. GOSS: Sure, Your Honor. 16:41:24

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1 This -- and for the court reporter this is Tim Goss.

2 I agree with the -- Your Honor's suggestion. I think
3 that will get some people to move.

4 Just for the Court's information, I think we're pretty
5 much at the end of the road on this. We've had a 95-percent
6 participation rate approximately. My experience has always
7 been that releases and decisions continue to trickle in.

16:41:42

8 I think that a good suggestion is that we send one
9 last letter explaining what the Court has informed us of and
10 see where we end up.

16:42:05

11 THE COURT: Any other thoughts from plaintiffs'
12 counsel?

13 Okay. How about from the defense?

14 MR. NORTH: Your Honor, Richard North.

15 I think that sounds like a good plan.

16:42:19

16 THE COURT: Okay. Then what we will do is -- and,
17 Jeff, I think we probably ought to put this into a case
18 management order so it's a document in the docket.

19 We will say that we are extending the time for these
20 dismissed cases to resolve to March 15th. But if by that date
21 people have not decided on settlements, or they can't be
22 located, or they're deceased without heirs, or they're not
23 responding, we're going to dismiss them without prejudice. And
24 that way we'll convert their dismissals to dismissals without
25 prejudice, and that way we won't be handing that problem off to

16:42:40

16:43:00

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1 a group of judges all across the country who will have to get
2 up to speed and get all of that done.

3 Nancy has sent me an email saying she found your
4 email, Mr. North, so we've got those four additional cases that
5 we will add to the reinstatement order. 16:43:20

6 Christine, did you see whether we have a hearing set
7 in mid March?

8 THE CLERK: Your Honor, there's not.

9 THE COURT: Okay. March 15th is a Monday?

10 THE CLERK: Yes, Your Honor. 16:43:44

11 THE COURT: Yeah, I think what I'd like to do,
12 counsel, is have you file a status report about what's happened
13 as of that March 15th deadline on -- by the close of business
14 on March 17th, so we know where everything stands as of March
15 15th. 16:44:09

16 And then let's set a telephone conference for
17 2:00 p.m. Arizona time on Friday, March 19th. And that will be
18 the final call to decide what happens with everything that's
19 still either on track 2 or is one of these dismissed cases.

20 Are there questions, concerns, other issues that we
21 ought to talk through today? 16:44:33

22 MR. GOSS: This is Ken Goss.

23 I don't have anything further, Your Honor. Thank you.

24 MR. NORTH: Your Honor, Richard North.

25 Nothing further from the defendants. 16:44:51

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1 THE COURT: Mr. Lopez or Mr. O'Connor on behalf of
2 plaintiffs generally, do you see any other issues that we need
3 to talk through?

4 MR. LOPEZ: Not at this time, Your Honor.

5 This is Ramon Lopez, Your Honor.

16:45:04

6 Not at this time. I actually said that, but I was on
7 mute. Sorry about that.

8 MR. O'CONNOR: And Mark O'Connor.

9 Not at this time, Your Honor.

10 THE COURT: Jeff, can you see other things we ought to
11 include in today's discussion?

16:45:15

12 MR. KILMARK: No, I think that covers everything.

13 And I'll revise the upcoming case management order to
14 include what we just discussed.

15 THE COURT: Okay. Nancy, how about you? Anything
16 we're missing? Any loose ends?

16:45:31

17 MS. OUTLEY: No, I think we're good.

18 I sent you the email, Jeff has it, and we'll add that
19 to the charge and get the order filed.

20 THE COURT: Okay. Okay. Thank you everybody. We'll
21 talk to you in March.

16:45:40

22 And let me know in the meantime if there's any issues
23 we need to address. And stay safe.

24 (Proceedings concluded at 4:45 p.m.)

25 -oOo-

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C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 4th day of March, 2021.

s/Candy L. Potter
Candy L. Potter, RMR, CRR